

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-8-10
PERSONAL CARE ASSISTANCE PROGRAM**

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1240-8-10-.01 LEGAL BASIS. Tennessee Code Annotated, Title 71, Chapter 4, Part 12; Rehabilitation Act of 1973, as amended, Sections 101(a)(6) and 103(a) (29 U.S.C. §§ 701(a)(6) and 723 (a)); Code of Federal Regulations, Title 34, Sections 361.42; and Code of Federal Regulations, Title 20, Section 404.1576.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.02 DEFINITIONS. As used in this chapter, the following terms have the following meanings:

- (1) "Division" means the Division of Rehabilitation Services of the Department of Human Services (also abbreviated "DRS").
- (2) "Eligibility Evaluation Team" is a team of at least two (2) persons, one (1) of whom is a licensed medical professional and one (1) of whom is a licensed occupational or physical therapist. The team is designated by the director of the division to carry out the duties specified in 1240-8-10-.05.
- (3) "Employed" means engaged in activity of thirty (30) or more hours per week for which the individual receives remuneration at a rate not less than the federal minimum wage. For self-employed individuals, the "net profit" from work activity must equate with this level of remuneration.
- (4) "Family Member" means an individual's parent, grandparent, sibling, child, spouse, spouse's parent, spouse's grandparent, spouse's sibling or spouse's child.
- (5) "Personal Care Assistant Services" (PCA) means services rendered at least five (5) days a week at the times of day, which are required by an individual with a significant physical disability, to become physically independent in connection with actual employment. These services include, but are not limited to:
 - (a) Routine bodily functions, personal hygiene, bowel or bladder care;
 - (b) Dressing;
 - (c) Preparation and consumption of food;
 - (d) Moving into, out of, or turning in bed;

(Rule 1240-8-10-.02, continued)

- (e) Bathing;
 - (f) Ambulation and/or mobility;
 - (g) Any other similar activity of daily living as determined appropriate by the Division.
- (6) “Significant Physical Disability” means a functional loss of both arms and both legs when it is anticipated that the loss will be permanent.
 - (7) “Ready For Employment” means an individual who is in or has been in the rehabilitation process, has completed the rehabilitation plan, has a legitimate job offer, and is within two months of remunerative employment.
 - (8) “Impairment Related Work Expense” means those work expenses that are impairment-related and are not reimbursed by a third party, and which are defined and allowed by Social Security Regulations in 20 CFR Section 404.1576.
 - (9) “Day Care Expense” means a work related child care expense wherein the cost of child care is necessary to allow a recipient of PCA services to work.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.03 PURPOSE AND SCOPE.

- (1) These rules describe policies and procedures for providing participant-directed Personal Care Assistance (PCA) services to eligible individuals through the Division state-funding program. The Program provides participant-directed PCA services to significantly disabled persons to enable them to enter or maintain remunerative employment. The Program is designed for individuals who are employed or are ready for employment (i.e., has a legitimate job offer), but who need Personal Care Assistance in order to be successful in their employment efforts. An individual must be determined to need PCA services for not less than fourteen (14) hours per week. PCA services subsidy is limited to forty (40) hours per week.
- (2) The PCA program provides subsidies to eligible individuals who are in financial need contingent upon the availability of funds. Eligible individuals are accepted into program so long as funds are available. When funds are exhausted, applications will continue to be taken, PCA evaluations performed, and the applications forwarded to the Central Office. A waiting list of eligible individuals will be established and maintained by the State Coordinator. Eligible individuals will be placed on the PCA program waiting list in order of the date and time their application was received. When sufficient funds become available, eligible individuals will receive services in the order they appear on the waiting list.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.04 GENERAL ELIGIBILITY REQUIREMENTS. Subject to availability of funds, a participant-directed PCA subsidy will be provided to an individual who:

- (1) Is eighteen (18) years of age or older;
- (2) Has a significant disability;
- (3) Is receiving or has received vocational rehabilitation services;

(Rule 1240-8-10-.04, continued)

- (4) Is employed or ready for employment;
- (5) Has a need documented by PCA evaluation for not less than fourteen (14) hours a week of personal care assistance provided by other than a family member to enable the individual to be employed or to maintain employment;
- (6) Has insufficient personal income or other support from public sources or family members, as determined under 1240-8-10-.07;
- (7) Agrees to establish an employer-employee relationship by recruiting, hiring, firing (if necessary), and supervising the person who provides PCA services;
- (8) Agrees to disclose financial records pertaining to PCA program expenditures upon request by authorized Department of Human Services staff; and
- (9) Is able to demonstrate or establish a means to responsibly manage personal funds.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.05 APPLICATION; ELIGIBILITY DETERMINATION.

- (1) Applications for PCA services may be filed at any DRS field office.
- (2) A DRS staff member will meet with the applicant, and complete the application for PCA services (PCA-1) and the financial needs test (PCA-2). Verification of income is required (i.e., income tax records, paycheck stubs, Clearing House, etc.).
- (3) If the applicant meets the financial needs test, the DRS staff member will arrange for a PCA evaluation by the eligibility evaluation team, to determine if a need for the PCA service exists and, if so, the approximate number of hours per week. Based on the evaluation, the eligibility evaluation team establishes the number of hours of subsidy per week the individual is to receive, and a PCA Service Plan (Form PCA-3) is developed. The non-financial eligibility determination and the determination of the hours of subsidy per week is based upon the best professional judgment of the team members. Factors that will be considered include the individual's ability or inability to perform normal daily tasks (as enumerated in Form PCA-4) and time required to perform each.
- (4) The individual is notified in writing of his/her eligibility for a subsidy. The individual and the DRS staff member sign the service plan. If funds are available, subsidy authorizations are issued by the DRS staff member.
- (5) If funds are not available, the individual is notified of same in writing by the DRS staff member and given a priority standing based upon date of application.
- (6) If the individual is determined ineligible to receive a PCA subsidy, he/she is notified in writing. The notice will specify the reason for ineligibility, and the right to appeal, as provided in 1240-8-10-.14.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.06 PERSONAL CARE ASSISTANCE RE-EVALUATIONS. Each individual determined eligible for a Personal Care Assistance subsidy will have been evaluated by an evaluation team to determine the extent of need for Personal Care Assistance Services pursuant to rule 1240-8-10-.05. Individuals who receive a Personal Care Assistance subsidy must be reevaluated at least annually, to determine the continuing need for PCA services and the extent of that need. If an individual is determined to be ineligible following a reevaluation, he/she will be notified of such in writing, as provided in rule 1240-8-10-.05.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.07 DETERMINATION OF FINANCIAL NEED.

- (1) Financial need and eligibility for PCA services will be determined according to the formula.
 - (a) Determine individual's annual income, before taxes, from all sources, including wages, net profit from self-employment, interest, dividends, pensions and disability benefits such as SSDI and SSI. Do not include spouse's income;
 - (b) Subtract federal income taxes from annual gross income;
 - (c) Subtract standard federal income tax exemptions from the remainder in Item (b). Do not include spouse as an exemption if spouse's income is over \$5,000 per year;
 - (d) Subtract FICA and mandatory pension contributions from remainder in Item (c);
 - (e) Subtract "impairment related" work expenses not reimbursed by a third party and which are defined and allowed by Social Security Regulations in 20 CFR, Section 404.1576. The cost of impairment related work expenses exceeding \$1,500 (e.g., home or vehicle modifications, durable medical equipment such as wheelchairs) must be spread out over a period of five (5) years in equal amounts;
 - (f) Divide the remainder in Item (e) by two (2);
 - (g) Subtract \$4.800 from the quotient in Item (f).
- (2) After applying the above formula, if:
 - (a) There is no income remaining, the program shall subsidize PCA services at the maximum allowable rate subject to a maximum of \$240 per week;
 - (b) There is income remaining, the cost of the subsidy for PCA services provided shall be reduced by the amount of that income;
 - (c) There is income remaining in excess of the maximum allowable amount for a PCA subsidy (\$240 per week), the individual is not eligible for a subsidy.
- (3) The PCA program may supplement any other program for Personal Care Assistance for which the individual is eligible, subject to a maximum of \$240 per week.

Authority: T.C.A. §71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997.

1240-8-10-.08 AUTHORIZATION AND BILLING PROCEDURE. When PCA program eligibility has been established, along with the amount of service time needed and a plan has been developed, an authorization will be issued to the individual by the DRS staff member on a monthly basis. The individual shall be provided with a sufficient quantity of “time logs” to be completed and submitted with the authorization to the State Coordinator by the 15th of the following month. Any overpayment resulting from the advance payment system must be repaid by the individual.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.09 RATE OF PAYMENT FOR PCA SERVICES.

- (1) The maximum allowable subsidy for services of a personal care attendant is \$6.00 per hour.
- (2) If the eligible individual is responsible for a portion of the cost of PCA services, the amount of the subsidy will be determined by the State Coordinator.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.10 RESPONSIBILITIES OF INDIVIDUALS RECEIVING PCA SERVICES. Individuals receiving PCA services as a condition of eligibility for receipt of the subsidy are responsible for the following:

- (1) Selecting, hiring, training, and supervising their own personal care attendant. A family member, as defined herein, may not be employed as a personal care attendant.
- (2) Preparing and submitting time logs, authorizations and other paperwork as directed by the DRS staff member or state coordinator.
- (3) Paying the personal care attendant and accepting full responsibility for the necessary employee withholding of Social Security and Federal income tax (if applicable in case of the latter) from the PCA subsidy.
- (4) Maintaining a financial record of payment.
- (5) Promptly notifying the DRS of any problems, or change in the need for PCA services or change in financial status.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1997. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10-.11 ANNUAL FINANCIAL REVIEW. Any significant changes in financial status must be reported by the individual throughout the year as provided in rule 1240-8-10-.10(5). In addition, a form PCA-2 will be sent to all individuals by the DRS staff in February of each year. This form is designed to update individual financial status, and must be completed and returned by June 30th of that year. Failure by the individual to complete and return the PCA-2 is a reason for termination of PCA services. Individuals applying after March 1st of a year will not be subject to the annual financial review until June 30th of the year following the first full year of service.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed December 5, 2003; effective April 29, 2004.

1240-9-10.12 COMPARABLE BENEFITS. If an individual is eligible for PCA services from any other program such as Medicaid, VA, Worker's Compensation, etc., such comparable benefits must be used prior to obligating PCA special program funds. The PCA special program may be used to supplement other programs for which the individual is eligible, subject to a maximum of \$240 per week.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10.13 TERMINATION OF SERVICES. The PCA subsidy may be terminated whenever a recipient fails to meet any of the eligibility requirements outlined in this chapter. If the subsidy is to be terminated, the State Coordinator will notify the individual in writing at least thirty (30) days prior to termination, giving the reasons for the termination and the effective date.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.

1240-8-10.14 APPEALS PROCESS.

- (1) Any applicant/recipient of services pursuant to this chapter who is aggrieved by a decision as to his/her eligibility, the number of hours approved for PCA services, and/or the amount of the subsidy has the right to request and receive an administrative review and/or a fair hearing pursuant to chapters 1240-5-1 through 1240-5-9. Provided, however, that the maximum hourly rate of subsidy, as provided in rule 1240-8-10-.09(1) is not appealable.
- (2) No applicant/recipient of services pursuant to this chapter may request review by the Secretary of the Federal Department of Education pursuant to 34 CFR § 361.48, unless he/she is being provided vocational rehabilitation services under an Individualized Plan for Employment pursuant to Title I of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§4-5-201 et seq. and 71-4-1201 et seq. through 71-4-1209. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004.